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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by Pax Christi International, International Catholic Peace Movement, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 January 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

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Question of the violation of civil and political rights, including the question of detention, of Kosovo Albanian prisoners in Serbia

Kosovo Albanian prisoners in Serbia

An estimated 800 Kosovo Albanians still remain in Serbian prisons, where they have been detained since June 1999. Some 600 of them are political prisoners, charged with terrorism or hostile activity against the state. The prisoners were frequently brutally beaten or tortured during the initial stages of detention. In their trials they were routinely denied the right to a fair trial. The democratic changes that took place in Serbia since the elections on 24 September and the "velvet revolution" of 5 October 2000 have not yet produced the promised correction of the miscarriages of justice as perpetrated against these Kosovo Albanian political prisoners.

The following takes into account the UN Security Council Resolution 1244/99, the European Parliament Resolution of 15 December 2000, the appeal of the French Presidency of the European Union of 29 December 2000 and of the Swedish Presidency of the European Union on 4 January 2001. It also builds on earlier initiatives of Pax Christi International: our International President, Msgr. Sabbah, Latin Patriarch of Jerusalem, appealed to President Kostunica and Foreign Minister Svilanovic of the Federal Republic of Yugoslavia on 19 December 2000. Along with this, Pax Christi's national sections in the course of the past 19 months have taken numerous initiatives.

The facts:
After the signing of the Military-Technical Agreement between Yugoslavia and NATO on 10 June 1999 (the Kumanovo Agreement) some 2,000 Kosovo Albanians were transferred from prisons in Kosovo to Serbia proper. Most of them were civilians who were unlawfully arrested by Serbian security forces during the war. According to information of, among others, Amnesty International, the majority of these prisoners were detained simply because they were ethnic Albanians, and not because they had participated in the armed conflict. Reportedly many prisoners were brutally beaten or tortured during the initial stages of detention.

Since then more than 1,100 of these Kosovo Albanian prisoners have been released after charges were dropped or sentences served. Large sums of money (reports of the Humanitarian Law Center in Belgrade mention sums of 10,000 to 30,000 German marks) was allegedly paid in many cases to secure their release.

As of January 2001, 19 months or longer since their arrest, still some 800 Kosovo Albanians remain in Serbian jails. Some 600 of them are political prisoners, charged with terrorism or hostile activity against the state. The remaining 200 are serving prison sentences for non-political crimes. They are either on trial, awaiting appeal, or have already had their appeals reviewed by the Serbian Supreme Court or the Military Supreme Court.

In their trials the Kosovo Albanian prisoners were routinely denied the right to a fair trial. According to Human Rights Watch and the Humanitarian Law Center who monitored the trials, there were often no court decisions for detention, access to lawyers was denied as were adequate facilities to prepare a defence. Courts sentenced Kosovo Albanians on the basis of forced confessions, and judges frequently refused the introduction of evidence that could have disproved the charges. The prosecution's primary evidence against those convicted was the highly unreliable and discredited "paraffin test," which checks for gunpowder on defendants' hands. One of the most flagrant cases was the mass trial in April-May 2000 in Nis of 143 Kosovo Albanians, sentenced to between seven and thirteen years imprisonment. The presumption of innocence was not respected and little attempt was made during the trial to establish the individual guilt of the accused. The case has been characterised by Amnesty International as "rubber stamp" justice.

From 1995 till 1999, Pax Christi facilitated a dialogue project between Serbian and Kosovo Albanian organisations, including the Independent Student Union of Pristina. As a representative of this Union, Albin Kurti participated in the dialogue. During a recent meeting with a Pax Christi representative, Albin Kurti - detained in the prison of Cuprija with a sentence of 15 years - advocated for the immediate and simultaneous release of all Albanian political prisoners in Serbia and the transfer of all non-political Kosovo Albanian prisoners to UNMIK-prisons.

The presidential elections in the Federal Republic of Yugoslavia and the democratic changes that took place in Serbia since 5 October 2000 have paved the way for the rule of law in the country. Newly elected Federal President Kostunica has promised that he will apply the Constitution and laws without delay.

A first positive step has been the release by President Kostunica of doctor and human rights campaigner Flora Brovina on 1 November 2000, as well as of ten other Kosovar Albanian prisoners who had been held without charge or trial for over 15 months.

However, the promised correction of the numerous other miscarriages of justice as perpetrated against Kosovo Albanian prisoners has not yet taken place. Since the readmission of the Federal Republic of Yugoslavia to the UN and the OSCE, the Federal Republic of Yugoslavia has not set a date for the release of the prisoners. Neither has the option of a presidential pardon been used, while according to the Yugoslav constitution and federal law, the Yugoslav president is empowered to pardon those indicted or convicted of federal crimes, such as hostile activity against the state and terrorism.

The Amnesty Bill, commissioned by President Kostunica, should be enacted into law as soon as possible. According to the Yugoslav Justice Minister Momcilo Grubac on 9 January 2001 the imminent Amnesty Law will cover offences included in the federal law, especially regarding acts against the Yugoslav Army and the constitutional order, with the exception of those crimes against humanity and international law. It is to be expected that this Amnesty Law will bring about the release of prisoners of conscience, conscientious objectors and deserters and the re-examination of unfair trials.

However, Minister Grubac added that the amnesty would not include terrorism, as this would be contrary to international conventions and the current struggle against terrorism in the world. This means that all those political prisoners charged with terrorism will have to go through the lengthy procedures of regular legal means.

Recommendations of Pax Christi International:

To the Serbian and Yugoslav authorities:

- President Kostunica should take all possible steps to secure the release of all political prisoners from the Milosevic era who are still detained in Serbian prisons. In concreto this would mean to release all political prisoners on the basis of the Amnesty Law soon to be enacted or by presidential pardon.
- As the imminent Amnesty Law appears to exclude terrorism, whereas most political prisoners have been charged with terrorism, an extensive presidential pardon should release all prisoners convicted on unsubstantiated political charges, especially on charges of so-called "terrorism".

To the International Community:

- The United Nations, the European Union, the OSCE as well as individual governments, should urge President Kostunica and the Serbian and Yugoslav governments to demonstrate their

commitment to the rule of law by reviewing the cases of Kosovo Albanian prisoners and releasing all those arrested or convicted on unsubstantiated political charges.

- The International Community should increase its support for the valuable work of the United Nations Human Rights High Commissioner Mary Robinson and the work of its Commission for Prisoners, Detainees and Missing Persons in Pristina.
- If all these measures won't lead to a release before the end of the present session of the United Nations Human Rights Commission, the International Community should consider a decision to link the continuation of financial assistance to the release of Kosovo Albanian prisoners.